

EXHIBIT A

IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI

██████████, a minor, by and
through his parents and Next Friends,
Tim Seidel and Hayley Seidel,

Plaintiff,

v.

CH ALLIED SERVICES, INC. d/b/a
BOONE HOSPITAL CENTER,

Defendant/Third-Party Plaintiff,

v.

BECTON, DICKINSON & COMPANY,

Third-Party Defendant.

Cause No. 17BA-CV01605

Division No. 2

THIRD-PARTY PETITION

Defendant CH Allied Services, Inc. d/b/a Boone Hospital Center, by and through the undersigned counsel, states the following for its Third-Party Petition for contribution against Becton, Dickinson & Company:

1. Plaintiff ██████████ ("plaintiff") is a minor and a resident of Moberly, Randolph County, Missouri.
2. CH Allied Services, Inc. d/b/a Boone Hospital Center is a corporation organized and existing under Missouri law with a principal place of business in Columbia, Boone County, Missouri.
3. Becton, Dickinson & Company ("BD") is a corporation organized and existing under New Jersey law with a principal place of business located at 1 Becton Drive, Franklin Lakes, New Jersey 07417-1880.

21397065.v1

4. In 2015, BD completed its acquisition of CareFusion Corporation pursuant to an October 5, 2014, Agreement and Plan of Merger.

5. CareFusion Corporation became BD's wholly-owned subsidiary when the acquisition was completed.

6. BD is liable for CareFusion Corporation's acts and omissions herein by virtue of the Agreement and Plan of Merger and by virtue of the fact CareFusion Corporation is BD's wholly-owned subsidiary.

7. Jurisdiction and venue for this action are proper in the Circuit Court of Boone County, Missouri, because plaintiff was first injured in Boone County, Missouri.

8. Plaintiff filed this matter against CH Allied Services, Inc. d/b/a Boone Hospital Center for injuries he allegedly experienced due to the over-infusion of oxytocin while his mother was in labor on December 20, 2014, at the Boone Hospital Center.

9. An Alaris Medical Systems Model 8100 pump that CareFusion Corporation designed, manufactured, and sold was used to deliver the oxytocin pursuant to plaintiff's private obstetrician's order directing an oxytocin augmentation during plaintiff's mother's labor.

10. Boone Hospital Center has contracts with BD for the maintenance of the Alaris Medical Systems Model 8100 pumps supplied to Boone Hospital Center.

11. The Alaris Medical Systems Model 8100 pump used to deliver the oxytocin malfunctioned and delivered an over-infusion of oxytocin to plaintiff's mother during her labor.

12. BD acknowledged in an April 15, 2019, Medical Device Recall Notification that the bezel manufacturing process for the Alaris Medical Systems Model 8100 pump's plastic may have resulted in its weakening and that the "weakened plastic may, over time, lead to separation of the bezel post (recall issue) as well as other damage to the bezel (i.e. external cracking)."

13. The Medical Device Recall Notification further stated, “The separation of one or more bezel posts may result in . . . over infusion,” which is precisely what happened when oxytocin was delivered during plaintiff’s mother’s labor.

COUNT I - STRICT LIABILITY PRODUCT DEFECT

14. CH Allied Services, Inc. d/b/a Boone Hospital Center incorporates by reference the allegations contained in paragraphs 1 through 13.

15. BD’s predecessor CareFusion Corporation in the course of its business designed, manufactured, and sold the Alaris Medical Systems Model 8100 pump that was used to deliver the oxytocin during plaintiff’s mother’s labor.

16. The Alaris Medical Systems Model 8100 pump at the time it was sold was in a defective condition unreasonably dangerous when put to a reasonably anticipated use because improper materials were used in the pump’s membrane and bezel posts and/or because the membrane and bezel posts were improperly designed.

17. The defective condition that existed when the Alaris Medical Systems Model 8100 pump was sold led to separation of the pump’s bezel post and membrane and other damage to the bezel, which resulted in the over-infusion of oxytocin during plaintiff’s mother’s labor.

18. CH Allied Services, Inc. d/b/a Boone Hospital Center’s agents, employees, and representatives used the Alaris Medical Systems Model 8100 pump in a manner reasonably anticipated.

19. Plaintiff alleges he was injured and damaged from the over-infusion of oxytocin during his mother’s labor.

20. The over-infusion of oxytocin that occurred during plaintiff's mother's labor was the result of the Alaris Medical Systems Model 8100 pump's defective condition that existed when the pump was sold.

21. CH Allied Services, Inc. d/b/a Boone Hospital Center has denied and does deny it committed acts or omissions that caused plaintiff's alleged injuries and damages.

22. Nevertheless, while denying any and all liability to plaintiff, CH Allied Services, Inc. d/b/a Boone Hospital Center has settled plaintiff's claims pursuant to a Release that permits CH Allied Services, Inc. d/b/a Boone Hospital Center to seek contribution from BD.

23. CH Allied Services, Inc. d/b/a Boone County Hospital is entitled to contribution against BD for BD's proportionate share of fault in causing plaintiff's injuries and damages resulting from the design, manufacture, and sale of the defective and unreasonably dangerous condition of the Alaris Medical Systems Model 8100 pump.

WHEREFORE, CH Allied Services, Inc. d/b/a Boone County Hospital prays for a Judgment in its favor and against Becton, Dickinson & Company for Becton, Dickinson & Company's proportionate share of fault in causing plaintiff's injuries and damages, for CH Allied Services, Inc. d/b/a Boone County Hospital' costs incurred herein, and for such other and further relief as the Court deems just and proper.

COUNT II - STRICT LIABILITY FAILURE TO WARN

24. CH Allied Services, Inc. d/b/a Boone Hospital Center incorporates by reference the allegations contained in paragraphs 1 through 13.

25. BD's predecessor CareFusion Corporation in the course of its business designed, manufactured, and sold the Alaris Medical Systems Model 8100 pump that was used to deliver the oxytocin during plaintiff's mother's labor.

26. The Alaris Medical Systems Model 8100 pump at the time it was sold was unreasonably dangerous when put to a reasonably anticipated use without knowledge of its characteristics because improper materials were used in the pump's membrane and bezel posts and/or because the membrane and bezel posts were improperly designed.

27. The unreasonably dangerous condition that existed when the Alaris Medical Systems Model 8100 pump was sold led to separation of the pump's bezel post and membrane and other damage to the bezel, which resulted in the over-infusion of oxytocin during plaintiff's mother's labor.

28. BD and its predecessor CareFusion Corporation did not give an adequate warning of the Alaris Medical Systems Model 8100 pump's danger.

29. CH Allied Services, Inc. d/b/a Boone Hospital Center's agents, employees, and representatives used the Alaris Medical Systems Model 8100 pump in a manner reasonably anticipated.

30. Plaintiff alleges he was injured and damaged from the over-infusion of oxytocin during his mother's labor.

31. The over-infusion of oxytocin that occurred during plaintiff's mother's labor was the result of the Alaris Medical Systems Model 8100 pump being sold without an adequate warning.

32. CH Allied Services, Inc. d/b/a Boone Hospital Center has denied and does deny it committed acts or omissions that caused plaintiff's alleged injuries and damages.

33. Nevertheless, while denying any and all liability to plaintiff, CH Allied Services, Inc. d/b/a Boone Hospital Center has settled plaintiff's claims pursuant to a Release that permits CH Allied Services, Inc. d/b/a Boone Hospital Center to seek contribution from BD.

34. CH Allied Services, Inc. d/b/a Boone County Hospital is entitled to contribution against BD for BD's proportionate share of fault in causing plaintiff's injuries and damages resulting from the design, manufacture, and sale of the unreasonably dangerous condition of the Alaris Medical Systems Model 8100 pump.

WHEREFORE, CH Allied Services, Inc. d/b/a Boone County Hospital prays for a Judgment in its favor and against Becton, Dickinson & Company for Becton, Dickinson & Company's proportionate share of fault in causing plaintiff's injuries and damages, for CH Allied Services, Inc. d/b/a Boone County Hospital's costs incurred herein, and for such other and further relief as the Court deems just and proper.

COUNT III - NEGLIGENCE

35. CH Allied Services, Inc. d/b/a Boone Hospital Center incorporates by reference the allegations contained in paragraphs 1 through 13.

36. BD's predecessor CareFusion Corporation designed, manufactured, and sold the Alaris Medical Systems Model 8100 pump that was used to deliver the oxytocin during plaintiff's mother's labor.

37. The Alaris Medical Systems Model 8100 pump was in a defective condition unreasonably dangerous because improper materials were used in the pump's membrane and bezel posts and/or because the membrane and bezel posts were improperly designed.

38. The defective condition that existed when the Alaris Medical Systems Model 8100 pump was sold led to separation of the pump's bezel post and membrane and other damage to the bezel, which resulted in the over-infusion of oxytocin during plaintiff's mother's labor.

39. BD and/or its predecessor CareFusion Corporation failed to use ordinary care to design or manufacture the Alaris Medical Systems Model 8100 pump to be reasonably safe or to adequately warn of the risk of harm from the Alaris Medical Systems Model 8100 pump.

40. CH Allied Services, Inc. d/b/a Boone Hospital Center's agents, employees, and representatives used the Alaris Medical Systems Model 8100 pump in a manner reasonably anticipated.

41. Plaintiff alleges he was injured and damaged from the over-infusion of oxytocin during his mother's labor.

42. The over-infusion of oxytocin that occurred during plaintiff's mother's labor was the result of BD's and/or its predecessor CareFusion Corporation's failure to use ordinary care in the design or manufacture of the Alaris Medical Systems Model 8100 pump or to adequately warn of the risk of harm from the Alaris Medical Systems Model 8100 pump.

43. CH Allied Services, Inc. d/b/a Boone Hospital Center has denied and does deny it committed acts or omissions that caused plaintiff's alleged injuries and damages.

44. Nevertheless, while denying any and all liability to plaintiff, CH Allied Services, Inc. d/b/a Boone Hospital Center has settled plaintiff's claims pursuant to a Release that permits CH Allied Services, Inc. d/b/a Boone Hospital Center to seek contribution from BD.

45. CH Allied Services, Inc. d/b/a Boone County Hospital is entitled to contribution against BD for BD's proportionate share of fault in causing plaintiff's injuries and damages resulting from the design, manufacture, and sale of the defective and unreasonably dangerous condition of the Alaris Medical Systems Model 8100 pump.

WHEREFORE, CH Allied Services, Inc. d/b/a Boone County Hospital prays for a Judgment in its favor and against Becton, Dickinson & Company for Becton, Dickinson &

Company's proportionate share of fault in causing plaintiff's injuries and damages, for CH Allied Services, Inc. d/b/a Boone County Hospital' costs incurred herein, and for such other and further relief as the Court deems just and proper.

COUNT IV - NEGLIGENTLY SUPPLYING DANGEROUS INSTRUMENTALITY

46. CH Allied Services, Inc. d/b/a Boone Hospital Center incorporates by reference the allegations contained in paragraphs 1 through 13.

47. BD's predecessor CareFusion Corporation supplied the Alaris Medical Systems Model 8100 pump that was used to deliver the oxytocin during plaintiff's mother's labor.

48. The Alaris Medical Systems Model 8100 pump was designed or manufactured whose bezel and bezel post were susceptible to separation and other damage from weakened plastic used in the pump's manufacturing process.

49. The bezel's and bezel post's susceptibility to separation and other damage rendered the Alaris Medical Systems Model 8100 pump dangerous when put to a reasonably expected use in that the separation of one or more bezel posts could result in over-infusion.

50. CH Allied Services, Inc. d/b/a Boone Hospital Center's agents, employees, and representatives put the Alaris Medical Systems Model 8100 pump to a reasonably expected use.

51. BD and its predecessor CareFusion Corporation had no reason to believe those for whose use the Alaris Medical Systems Model 8100 pump was supplied would realize its dangerous condition.

52. BD and its predecessor CareFusion Corporation knew or had information from which BD and its predecessor CareFusion Corporation in the exercise of ordinary care should have known of the Alaris Medical Systems Model 8100 pump's dangerous condition.

53. BD and its predecessor CareFusion Corporation failed to adequately warn of the Alaris Medical Systems Model 8100 pump's dangerous condition.

54. BD and its predecessor CareFusion Corporation were thereby negligent.

55. Plaintiff alleges he was injured and damaged from the over-infusion of oxytocin during his mother's labor.

56. The over-infusion of oxytocin that occurred during plaintiff's mother's labor was the result of BD's and its predecessor CareFusion Corporation's negligence.

57. CH Allied Services, Inc. d/b/a Boone Hospital Center has denied and does deny it committed acts or omissions that caused plaintiff's alleged injuries and damages.

58. Nevertheless, while denying any and all liability to plaintiff, CH Allied Services, Inc. d/b/a Boone Hospital Center has settled plaintiff's claims pursuant to a Release that permits CH Allied Services, Inc. d/b/a Boone Hospital Center to seek contribution from BD.

59. CH Allied Services, Inc. d/b/a Boone County Hospital is entitled to contribution against BD for BD's proportionate share of fault in causing plaintiff's injuries and damages resulting from the design, manufacture, and sale of the defective and unreasonably dangerous condition of the Alaris Medical Systems Model 8100 pump.

WHEREFORE, CH Allied Services, Inc. d/b/a Boone County Hospital prays for a Judgment in its favor and against Becton, Dickinson & Company for Becton, Dickinson & Company's proportionate share of fault in causing plaintiff's injuries and damages, for CH Allied Services, Inc. d/b/a Boone County Hospital's costs incurred herein, and for such other and further relief as the Court deems just and proper.

DEFENDANT DEMANDS A TRIAL BY JURY OF TWELVE ON ALL ISSUES.

SANDBERG PHOENIX & von GONTARD P.C.

By: 

Kenneth W. Bean, #28249
Russell L. Makepeace, #51359
Sean M. Harmon, #70105
600 Washington Avenue - 15th Floor
St. Louis, MO 63101-1313
314-231-3332
314-241-7604 (Fax)
kbean@sandbergphoenix.com
rmakepeace@sandbergphoenix.com
sharmon@sandbergphoenix.com
Defendant CH Allied Services, Inc.
d/b/a Boone Hospital Center's Attorneys

Certificate of Service

I hereby certify that on this 15th day of June 2023 the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

John Rollins
Paul Kavanaugh
Rollins/Kavanaugh, P.C.
john@therollinslawfirm.com

Chris Faiella
Gump & Faiella, LLC
cfaiella@tgflaw.com
Attorneys for Plaintiff

